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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,855	04/14/2004	Fritz Maurer	CS-7515D/LeA 34,465D	5503

34469 7590 11/01/2006

BAYER CROPSCIENCE LP  
Patent Department  
100 BAYER ROAD  
PITTSBURGH, PA 15205-9741

EXAMINER
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SAEED, KAMAL A

ART UNIT	PAPER NUMBER
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1626

DATE MAILED: 11/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/823,855

Applicant(s)

MAURER ET AL.

Examiner

Kamal A. Saeed

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 13 and 14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13 and 14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### ***DETAILED ACTION***

Claims 1 – 12 have been cancelled. Therefore, claims 13 and 14 are currently pending in this application.

### ***Response to Amendment/Remarks***

The rejections of claims 13 and 14 under 35 U.S.C. 102 have been overcome by the amendment filed on 08 August 2006.

The following Rejections are necessitated by the amendment

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a), which forms the basis for all obviousness rejections, set forth in this Office action:

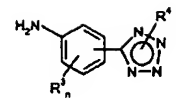
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 13 is rejected under 35 U.S.C. 103 (a) as being obvious by US Patent No. 4,286,090 or 3,838,126.

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Applicants instant elected invention in claim 13 compounds of Formula

wherein

R<sup>3</sup> represents chlorine, fluorine, methyl or trifluoromethyl,

n represents 1 or 2, and

R<sup>4</sup> ~~is as defined in Claim 13~~ represents hydrogen, optionally substituted alkyl, optionally substituted alkenyl, alkoxyalkyl, alkoxy carbonylalkyl, alkoxy carbonyloxyalkyl, alkylsulphonyl, diaminocarbonyl; in each case optionally substituted aryl, arylalkyl or arylsulphonyl; in each case optionally substituted cycloalkyl or cycloalkylalkyl or in each case optionally substituted heterocyclyl or heterocyclylalkyl, and the position of substitution of the tetrazole on the phenyl ring is in the 2-, 3- or 4-position.

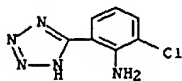
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Determination of the scope and content of the prior art (MPEP §2141.01)

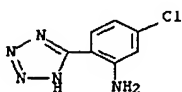
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US Patent No. 3,838,126 (CAS ABSTRACT of the structures were submitted with previous office action), teach compounds of Formula

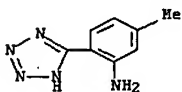
RN 26803-78-1 CAPLUS  
CN Benzenamine, 2-chloro-6-(1H-tetrazol-5-yl)- (9CI) (CA INDEX NAME)



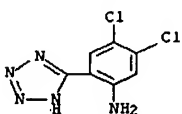
RN 54013-18-2 CAPLUS  
CN Benzenamine, 5-chloro-2-(1H-tetrazol-5-yl)- (9CI) (CA INDEX NAME)



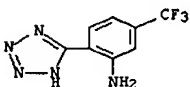
RN 54013-19-3 CAPLUS  
CN Benzenamine, 5-methyl-2-(1H-tetrazol-5-yl)- (9CI) (CA INDEX NAME)



RN 54013-21-7 CAPLUS  
CN Benzenamine, 4,5-dichloro-2-(1H-tetrazol-5-yl)- (9CI) (CA INDEX NAME)

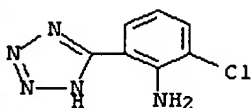


RN 54013-22-8 CAPLUS  
CN Benzenamine, 2-(1H-tetrazol-5-yl)-5-(trifluoromethyl)- (9CI) (CA INDEX NAME)



US Patent No. 4,286,090, teach compounds of Formula

RN 26803-78-1 CAPLUS  
CN Benzenamine, 2-chloro-6-(1H-tetrazol-5-yl)- (9CI)



Ascertainment of the difference between the prior art and the claims (MPEP §2141.02)

The difference between the prior art of U.S Patent No. 4,286,090 or 3,838,126 and the claims of present invention is that the tetrazole is attached to the phenyl ring at 3 or 4 position as opposed to 2 position of the prior art.

Finding of prima facie obviousness--rational and motivation (MPEP §2142-2413)

One skilled in the art would have found the claimed compound prima facie obvious because it is well established to those skilled in chemical art, one isomer is not such an advance a known member of series as requires invention because chemists knowing properties of one member of series would in general know what to expect in similar members Nothing unobvious is seen in substituting the known claimed isomer for the structurally similar isomer, as taught by US Patent No. 4,286,090 or 3,838,126, since such structurally related compounds suggest one another and would be expected to share common properties absent a showing of unexpected results. In re Norris, 84 USPQ 458 (1950). Therefore, the instant claimed compounds would have been suggested to one skilled in the art.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 14 recites the limitation "n is 0". There is insufficient antecedent basis for this limitation in claim 13. In claim 13, it is recited that n can be 1 or 2. Since claim is depending on claim 13, it is not further limiting the claim. If applicant wants to incorporate the compounds of claim 13 wherein n is 0, then it is suggested that claim 14 be written as an independent claim.

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Therefore **THIS ACTION IS MADE FINAL**. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136 (a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

### ***Telephone Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kamal A Saeed whose telephone number is (571) 272-0705. The examiner can normally be reached on M-T 7:30 AM- 5:00 PM.

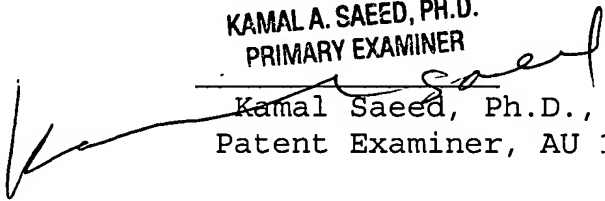
Communication via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by applicant and should be addressed to [joseph.mckane@uspto.gov]. All Internet e-mail communications will be made of record in the application file. PTO employees will not communicate with applicant via Internet e-mail where sensitive data will be exchanged or where there exists a possibility that sensitive data could be identified unless there is of record an express waiver of the confidentiality requirements under 35 U.S.C. 122 by the applicant. See the Interim Internet Usage Policy

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published by the Patent and Trademark Office Official Gazette on February 25, 1997 at 1195 OG 89.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or public PAIR only. For more information about the pair system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197.

KAMAL A. SAEED, PH.D.  
PRIMARY EXAMINER



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